

# Morgan Lewis

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**BY ECF**

The Honorable Debra Freeman, U.S.M.J.  
United States District Court, Southern District of New York  
500 Pearl Street, Courtroom 17A  
New York, NY 10007

Re: *Phoenix Light SF DAC, et al. v. Deutsche Bank Nat'l Trust Co., et al.*, Case No. 14-cv-10103 (JGK) (DCF); *Commerzbank AG v. Deutsche Bank Nat'l Trust Co., et al.*, Case No. 15-cv-10031 (JGK) (DCF)

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Dear Magistrate Judge Freeman:

We represent Defendants Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, each solely in its capacity as trustee for certain residential mortgage-backed securitization trusts at issue (the "Trustees"). On August, 24, 2018, Plaintiffs filed letters (*Phoenix Light* ECF No. 242, *Commerzbank* ECF No. 127) requesting a pre-motion conference on their anticipated motions to strike two rebuttal expert reports served by the Trustees and to compel the Trustees to supplement their interrogatory responses. In accordance with the schedule agreed upon by the parties, the Trustees filed their oppositions on August 29 (*Phoenix Light* ECF No. 247, *Commerzbank* ECF No. 133) and Plaintiffs filed their replies on August 31 (*Phoenix Light* ECF No. 251, *Commerzbank* ECF No. 138). As discussed below, Plaintiffs raised a new argument for the first time on reply. The Trustees seek a fair opportunity to respond to the new argument. Accordingly, the Trustees respectfully request leave to file a 1-page sur-reply. A copy of the Trustees' proposed sur-reply is attached as Exhibit A.

The Court should grant leave to file a sur-reply where new matters are raised for the first time in a party's reply. See *Chefs Diet Acquisition Corp. v. Lean Chefs, LLC*, No. 14-CV-8467 (JMF), 2016 WL 5416498, at \*5 n.3 (S.D.N.Y. Sept. 28, 2016) ("Where new evidence is presented in a party's reply brief . . . the district court should permit the nonmoving party to respond to the new matters prior to the disposition of the motion.") (internal citations omitted). Here, for the first time on reply, Plaintiffs argue that *Lindenman v. Kreitzer*, 7 A.D.3d 30, 35, 775 N.Y.S.2d 4, 8 (2004) (addressing issue of collectability of underlying judgment in legal

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malpractice case) supports their position that the Trustees bear burden of proof on the Twelfth and Thirty-Third Defenses set forth in the Trustees' Answers. The Trustees respectfully seek leave to file a sur-reply to address Plaintiffs' new argument.

Respectfully submitted,

/s/ Kevin J. Biron

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cc: All Counsel of Record via ECF